

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has renounced his Iranian citizenship, and has surrendered his expired Iranian passport. He has lived in the U.S. for 32 years, and has been a U.S. citizen for nearly 18 years. He is married to a German national, who has applied for U.S. citizenship. Their five year old daughter is a native-born American. The Applicant's brother and sister live in Iran. His 61 year old brother is a retired truck driver, and his 69 year old sister is a housewife. He has not visited Iran since 1999, as his parents are both deceased, and he has no intention of visiting Iran in the future. As the Applicant has "longstanding relationships and loyalties in the U.S.," it is unlikely that he "will be placed in a position of having to choose between the interests of . . . [his foreign relative] . . . and the interests of the U.S." Mitigation is shown. Clearance is granted.

CASENO: 06-25183.h1

DATE: 09/06/2007

DATE: September 6, 2007

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-25183

**DECISION OF ADMINISTRATIVE JUDGE  
RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

The Applicant has renounced his Iranian citizenship, and has surrendered his expired Iranian passport. He has lived in the U.S. for 32 years, and has been a U.S. citizen for nearly 18 years. He is married to a German national, who has applied for U.S. citizenship. Their five year old daughter is a native-born American. The Applicant's brother and sister live in Iran. His 61 year old brother is a retired truck driver, and his 69 year old sister is a housewife. He has not visited Iran since 1999, as his parents are both deceased, and he has no intention of visiting Iran in the future. As the Applicant has "longstanding relationships and loyalties in the U.S.," it is unlikely that he "will be placed in a position of having to choose between the interests of . . . [his foreign relative] . . . and the interests of the U.S." Mitigation is shown. Clearance is granted.

## **STATEMENT OF THE CASE**

On March 12, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on March 30, 2007.

The case was received by the undersigned on April 25, 2007. A notice of hearing was issued on May 3, 2007, and the case was heard on June 14, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence in his own behalf. At the hearing, the Government moved to amend the SOR to add Guideline C, Foreign Preference. There being no objection by the Applicant, the SOR was so amended. The transcript (TR) was received on June 27, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of Guideline B, Foreign Influence, but denies those alleged under Guideline C, Foreign Preference.]

## **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 54 years of age, obtained Master's Degree and a Ph.D. from an American university, and is employed by a defense contractor which seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### **Guideline B - Foreign Influence**

1.a~1.c. The Applicant's brother and sister are citizens of and reside in Iran (TR at page 22

line 22 to page 23 line 6). His 61 year old brother is retired, and was a truck driver for “a tobacco company” (TR at page 38 line 15 to page 39 line 5). His 69 year old sister is a housewife (TR at page 42 line 21 to page 43 line 1). The Applicant has not visited Iran since 1999, eight years ago, as his parents are now both deceased (TR at page 23 line 17 to page 24 line 7, and at page 36 line 19 to page 37 line 2). Furthermore, he has no intention of visiting Iran in the future (*Id*).

The Applicant is not subject to coercion vis-a-vis his Iranian siblings (TR at page 48 line 17 to page 50 line 3). He would report any such attempt at coercion to the appropriate U.S. authorities (*Id*).

### Guideline C - Foreign Preference

The Applicant has lived in the U.S. for 32 years, and has been a U.S. citizen for nearly 18 years (TR at page 22 lines 10~22). He is married to a German national, who has applied for U.S. citizenship (TR at page 27 line 11 to page 30 line 8). Their five year old daughter is a native-born American (*Id*).

2.a.~2.c. The Applicant has renounced his Iranian citizenship, and has surrendered his expired Iranian passport (TR at page 24 lines 8~24, at page 37 line 19 to page 38 line 4, and Applicant's Exhibits (AppXs) E and F). His loyalty is only to the U.S. (*Id*).

As the Applicant has Iranian siblings, I must also consider the country of Iran. Iran is a state that sponsors terrorism. The U.S. has not had diplomatic relations with Iran since 1980. It is a theocratic Islamic republic in which Shi'a Muslim clergy dominate the key power structures, and ultimate political authority is vested in a learned religious scholar. Iran's dismal and worsening human rights record presents a further threat to the U.S., as a large number of Iranians emigrated to the U.S. in 1979, after their Islamic revolution. These immigrants often left behind family members in Iran. Iran's security forces often target family members of political prisoners for harassment purposes.

### POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

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## **CONCLUSIONS**

The Applicant, until recently, maintained an expired Iranian passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an "exercise of any right . . . of foreign citizenship after becoming a U.S. citizen . . . This includes but is not limited to: (1) possession of a current foreign passport; . . ." This is countered, however, by the second and fifth mitigating conditions. "[T]he individual has expressed a willingness to renounce dual citizenship," and "the passport has been . . . surrendered to the cognizant security authority . . ." Furthermore, the Applicant has not only "expressed a willingness to renounce," but has renounced his Iranian citizenship.

The Applicant's siblings are citizens of and reside in Iran. The first and second disqualifying conditions under Foreign Influence are arguably applicable as this contact "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and creates "a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information." Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with his brother and sister is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his siblings] and the interests of the U.S." Also, the Applicant "has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." The last 32 years of his life, and his immediate family are all connected with the U.S.

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation

under the “whole person concept” (AppXs B~D). Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his perceived Foreign Preference and Foreign Influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

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### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Foreign Influence      FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: Foreign Preference      FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

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### **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola  
Administrative Judge